IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7536 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRUTBHAI C CHAUHAN

Versus

SUPERINTENDING ENGINEER

Appearance:

1. Special Civil Application No. 7536 of 1990

MR BR PARIKH for Petitioner No. 1

MRS RB PARIKH for Petitioner No. 1

MR UDAY BHATT, AGP, for Respondent No. 1-4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/02/2003

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner seeks a mandate on the respondents to grant all the benefits of resolution No.WCE/1588/(5)/(1)/G-2 dated 17.10.1988, passed by the

Roads and Buildings Division of the State of Gujarat with a further direction to pay the petitioner his salary accordingly by regularising the breaks in service.

2. The case of the petitioner, in brief, is that he was working as a labourer on daily wage basis with the respondents since August 23, 1982. According to him, his juniors have been granted benefits of the said G.R. dated 17.10.1988, whereas he has been denied these benefits and has, therefore, approached this Court.

3. The respondents contest this petition with a case that the juniors to the petitioner had completed requisite number of days for a period of five years, as contemplated under the G.R., and, therefore, they are given the benefits. The petitioner has not completed requisite number of days (240 days) for a period of five years and, therefore, the benefits have not been given to him.

4. The petitioner's affidavit-in-rejoinder and further affidavits indicate that, as per earlier statement indicated by the respondents, the number of days on which the petitioner has worked and the number of days, as indicated from the record procued before this Court, differ. Even, according to the record, the petitioner is entitled to the benefits from 1987-88, which is not granted. The petitioner has been continuously making representations to the respondents, but in vein, and is informed that because of pendency of this petition, his application cannot be considered.

5. The learned Advocate, Mr. Parikh, has drawn attention of this Court to various representations made by the petitioner from 1993 onwards. He has also drawn attention of this Court to the fact that there is variance in the number of days worked by the petitioner as indicated in the affidavit-in-reply by the respondents and as per the statement produced by the respondents in Civil Application No.5788 of 2002 in Civil Application No.10675 of 2001 in this petition. Certified copies of Muster Roll and Pay Roll of the petitioner have been produced before this Court, which have been examined by Mr. Parikh.

6. Learned Assistant Government Pleader, Mr. Bhatt, opposes this petition. He states that the discrepancy may have arisen out of some inaccuracy on part of the staff member. The representations made by the petitioner are not decided because of pendency of this petition. He

submitted that the respondents had nothing against the petitioner but since he does not fall into the criteria, his case is not considered.

7. Having regard to rival side contentions, it appears that there is discrepancy in the number of days on which the petitioner has worked even as per the case of the respondents as emerging from the affidavit-in-reply as well as the statement produced in Civil Application No.5788 of 2002. It also appears that the case of the petitioner has not been considered by the respondent-authorities on ground of pendency of this petition, although no stay was operating against them. Mr. Parikh has drawn attention of this Court that even prior to filing of this petition, a representation was made on 11.8.1990 (Annexure-F), which has not been considered.

8. In this view of the matter, this petition can be disposed of by issuing following directions :-

Respondent No.4 will treat this petition as a representation of the petitioner and will be decided by an officer not below the rank of Deputy Secretary. The said officer will take into consideration the contentions raised in the petition and supporting documents, including the affidavits of the petitioner and consider the case of the petitioner for grant of benefit of the G.R. in question after taking into consideration his eligibility, in facts of the case, and after affording an opportunity to the petitioner of being heard. The decision will be taken as early as possible, preferably, within eight weeks from the date of receipt of the order of this Court. Mr. Parikh undertakes to supply a complete set of xerox of the record of this petition. The petition stands disposed of accordingly. Rule is discharged with no order as to costs.

9. Mr. Parikh has drawn attention of this Court to the fact that there is an error in the title of the table indicated in paragraph 1 of the affidavit of the petitioner dated the 27th January, 2003, wherein it is stated that the number of days worked indicated by "the petitioner", instead it should have been "the respondents". It is apparent that it is a mistake and even if not corrected, it would carry the same meaning as the table only indicates two different stands taken by the respondents. Mr. Parikh is permitted to produce a copy of Annexure-I on record, produced by the respondent in affidavit-in-reply.

10. Direct service is permitted.

[A. L. DAVE, J.]

gt